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Ms. Cynthia Brown, Section Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

ENTERED
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June 25, 2018
Part of
Public Record

Re: Finance Docket No. 36025, Texas Central Railroad and Infrastructure, Inc. & Texas Central Railroad, LLC—Authority to Construct and Operate—Petition For Exemption from 49 U.S.C. § 10901 and Subtitle IV – Passenger Rail Line between Dallas, TX, and Houston, TX

Dear Ms. Brown:

Pursuant to 49 C.F.R. § 1104.13(c), Texans Against High Speed Rail (TAHSR) hereby replies in opposition to the Motion for Leave to File Response to Replies (Motion), filed on June 12, 2018, by Texas Central Railroad and Infrastructure, Inc. and Texas Central Railroad, LLC (collectively, TCR). The Motion and “Response” filed by TCR should be rejected on the grounds that they constitute an impermissible reply to a reply. Alternatively, if the Motion is granted, TAHSR should be permitted to file the following brief response to TCR’s misleading suggestions at page 7 of its tendered Response regarding statements in the Federal Railroad Administration’s (FRA) “Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws.”

According to TCR, FRA has already determined that the line is part of “the general system of railroad transportation.”¹ Pointing to language lifted from FRA’s “Appendix A to Part 209-Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws,” TCR insists that “FRA regulations define ‘general system of rail transportation’ as ‘the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas.’” It also notes that FRA’s “Policy” states that “portions of the network may lack a physical connection but still be part of the system by virtue of the nature of operations that take place there.”²

Given FRA’s unequivocal mandate “to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents,”³ FRA unquestionably is authorized to assert jurisdiction over all aspects of both interstate and intrastate rail operations to promote safety. In the section of its Policy Statement entitled “The

¹ TCR Response at 7, & n. 23.

² *Id.*

³ 49 U.S.C. § 20101.

Extent and Exercise of FRA's Safety Jurisdiction," FRA recognizes that its authority "extends to all areas of railroad safety," except "rapid transit operations in an urban area that are not connected to the general railroad system of transportation," and that the term "railroad" in the Rail Safety Acts is not limited to the confines of "common carrier by railroad" as that language is defined in the Interstate Commerce Act. A review of the revised definitions that were enacted in 2008 confirms FRA's observation and reflects a clear difference between the definitions in the Safety Acts and the ICA. *See, e.g.*, 49 U.S.C. § 20102(2)(A)(ii), which, as herein relevant, includes "high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroad" within the definition of "railroad."

TCR cannot point to any specific statutory provision that compels the conclusion that every standard gage track over which passengers may travel between cities is part of the general system of rail transportation.⁴ In fact, the only statutory provision in the ICA that defines the term "rail carrier," namely 49 U.S.C. § 10102(5), specifically excludes "street, suburban or interurban electric railways" irrespective of whether they are operated over standard gage track. Hence, the Board should summarily reject TCR's attempt to confuse the issue by referencing FRA's Policy Statement.

Respectfully submitted,

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⁴ It should also be noted that TCR's proposed operation does not fit within the statutory definition of the "national rail passenger transportation system," which is defined at 49 U.S.C. § 24102.

CERTIFICATE OF SERVICE

I hereby certify that I have served all parties of record in this proceeding with this document by United States mail or by e-mail on June 25, 2018.

/s/ Richard H. Streeter